

## Comments for Certificate of Need Hearing

As I read the public comments for the Modernization of the Certificate of Need process, I am reading about psychiatric care services, ambulatory health care services, and home health care services.

It seems to me that the elephant in the room is that over 50% of births in Kentucky are paid for by Medicaid, and birth services as provided by physicians in hospitals result in a 35-45% surgical delivery. Surgical deliveries across the nation as well as in Kentucky are almost twice as expensive as normal vaginal deliveries. The obstetric paradox is that we are paying more and more and getting worse outcomes from pregnancy. Indeed, the maternal death rate in the United States of America is rising!

I admit to being quite naïve about the certificate of need process at first. I believed that I could fill out the forms, receive a non-substantive review, and start to build my birth center. The proposed birth center, by the way, is a non-profit corporation that ideally would serve all women were it not for the Kentucky regulation that restricts Medicaid payments to \$365.00 per birth inclusive of all supplies, equipment and professional fees. I pay an RN more than that to attend births with me.

As I took my paperwork to the Cabinet, I found that I would need to hire a "Certificate of Need" lawyer. As I called a group of Certificate of Need lawyers, I found that none could represent me as they represented hospitals and would have a conflict of interest. I finally did find an attorney to represent me to the cabinet. My attorney told me that I would need to hire a Certificate of Need consultant corporation. So I did that too. The consultant informed me that applications for my Certificate of need would only be taken twice per year and that we had just missed a deadline. So we wrote and made the arguments for a birth center and submitted my application and fee.

There were hospitals that claimed they were affected parties and as such we had to have a hearing for my non-substantive review. The hearings were delayed as depositions were taken and the holidays passed, so the attorneys and judge could find available times for the hearings. They took place on 4 separate days in two separate months, requiring me to pay for experts to travel to the area and stay in hotels four different times! After all that, the application was denied. I am thrilled to report that I have prevailed in appealing the denial; however, we are now 4 years and many hundreds of thousands of dollars down the road.

The resources required to give women of the Commonwealth a nationally accepted, evidence-based, alternative to hospital birth were dwindling rapidly. My right to start a service-oriented, small business, a right I served 25 years in the United States Army to defend, had been denied. I am naïve and stupid. Why should I want to stay up all night to serve the families of our Commonwealth when I could just move out

of state, as my own daughter did, in order to practice our proud profession, midwifery. Rene Burchett, CNM, no longer has privileges at King's Daughter's Hospital in Ashland, KY. Medicaid recipients in this area are desperate for another choice for their care as all Obstetricians in this region refuse to work with Nurse-Midwives. Robin Centner, CNM, and Shauna Zerhusen, CNM were let go from their positions in northern Kentucky and now go to work in Ohio. These licensed, competent and caring individuals cannot work within the current health care system. This has also happened in Richmond, Cambellsville, Madison, Mayfield, and Elizabethtown. Alternative birth centers are the places of business for midwives.

Kentucky is the birthplace of modern midwifery in the United States. It is the place where Mary Breckenridge started saving the lives of women and children by providing evidence-based care. Today I, too, provide evidence-based care informed by a doctorate in clinical research. I teach optimal wellness. I hold clients accountable for their own wellness and that of their baby.

Physicians are more likely trained in pathology, illness treatment, and surgery. I am trained in wellness, prevention, and natural processes. I want to work in an integrated health care system in which I can transfer women and infants to physicians if they become ill. I want the health system to welcome transferred women and families rather than scorn and ridicule them.

I disagree with the Kentucky Hospital Association's CON comments to the Cabinet in most cases.

Principle 1 – CON deregulation will provide the commonwealth with more options and will not fragment care if Kentucky Hospitals will cooperate and allow an integrated model.

Principle 2 – Incentivizing development of the full continuum of care. There is NOT sufficient availability and capacity of health services. The Kentucky Hospital Association regulations allow for only physicians to admit to hospitals. Nurse Midwives and other APRN's can admit only under a physician's signature, therefore the Kentucky hospital association regulation contradicts the non-supervisory language of the advanced nurse-practice act and violates the federal anti-trust laws.

Principle 3 – Incentivizing Quality - The argument that quality of care would diminish by reducing volumes of care across all providers is nonsense. Spending less than 5 minutes per patient and not LISTENING to patients reduces quality of care. Payment for quality care and good outcomes should be accompanied by not only adequate reimbursement for time spent with women and families, but by disincentives for readmissions, and multiple re-visits to a provider beyond the standard of care.

Principle 4- Improving Access – There is no evidence that CON deregulation reduces access, in fact it improves access by improving choices in care and promoting those programs with the best outcomes.

Principle 5- Improving Value of Care – YES! States with a CON have choices in services and do operate at lower volumes per provider. Hallelujah!!!

Principle 6 – Promoting Adoption of Efficient Technology – We agree!

Principle 7 – Exempting services – There is no evidence that elimination of the CON process would fragment care. Rather it would force new and existing services to work together to improve capacity and allow for lower volumes per provider and greater quality of care.

Conclusions:

The CON process IS onerous and does not allow flexibility to providers.

The CON process does serve as an anti-competition, often violates the Federal Anti-trust laws, and does not improve health care outcomes for the commonwealth.

I ask that the Kentucky Certificate of Need Process exempt non-profit Alternative Birth Centers from the process of application and review until there is one Alternative Birth center in each of the 15 area development districts. All Kentucky families will have access to more choices in childbirth.

In support of my comments, I have submitted the ruling of Judge J. Phillip Shepherd, Franklin Circuit Court, Division 1 who opined: “This Court is persuaded by the Petitioner’s interpretation of KAR 20:150, under which it argues alternative birth centers are to operate in addition to (i.e., as an alternative to) the traditional, hospital-based delivery services currently offered within the state so that women may choose how they wish to give birth.”

Thank you.